



Senate

File No. 757

General Assembly

February Session, 2014

(Reprint of File No. 191)

Substitute Senate Bill No. 209
As Amended by Senate Amendment
Schedule "A" and House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 3, 2014

**AN ACT PROHIBITING UNSOLICITED COMMERCIAL TEXT
MESSAGES AND INCREASING PENALTIES FOR VIOLATIONS OF
THE DO NOT CALL REGISTRY.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 42-288a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2014*):

3 (a) As used in this section and section 2 of this act:

4 (1) "Commissioner" means the Commissioner of Consumer
5 Protection;

6 (2) "Consumer" means any individual who is a resident of this state
7 and a prospective recipient of consumer goods or services;

8 (3) "Consumer goods or services" means any article or service that is
9 purchased, leased, exchanged or received primarily for personal,
10 family or household purposes, and includes, but is not limited to,
11 stocks, bonds, mutual funds, annuities and other financial products;

- 12 (4) "Department" means the Department of Consumer Protection;
- 13 (5) "Doing business in this state" means conducting telephonic sales
14 calls (A) from a location in this state, or (B) from a location outside of
15 this state to consumers residing in this state;
- 16 (6) "Prior express written consent" has the meaning provided in 47
17 CFR 64.1200, as amended from time to time;
- 18 [(6)] (7) "Marketing or sales solicitation" means the initiation of a
19 telephone call or message, including, but not limited to, a text or media
20 message, to encourage the purchase or rental of, or investment in,
21 property, goods or services, that is transmitted to any consumer, but
22 does not include a telephone call or message, including, but not
23 limited to, a text or media message (A) to any consumer with [that]
24 such consumer's prior express written [or verbal invitation or
25 permission] consent, (B) by a tax-exempt nonprofit organization, or (C)
26 to a consumer in response to a visit made by such consumer to an
27 establishment selling, leasing or exchanging consumer goods or
28 services at a fixed location;
- 29 [(7)] (8) "Telephonic sales call" means a telephone call made by a
30 telephone solicitor, or a text or media message sent by or on behalf of a
31 telephone solicitor, to a consumer for the purpose of (A) engaging in a
32 marketing or sales solicitation, (B) soliciting an extension of credit for
33 consumer goods or services, or (C) obtaining information that will or
34 may be used for marketing or sales solicitation or exchange of or
35 extension of credit for consumer goods or services;
- 36 [(8)] (9) "Telephone solicitor" means any individual, association,
37 corporation, partnership, limited partnership, limited liability
38 company or other business entity, or a subsidiary or affiliate thereof,
39 doing business in this state that makes or causes to be made a
40 telephonic sales call, including, but not limited to, sending or causing
41 to be sent a text or media message to a consumer's mobile telephone or
42 mobile electronic device;

43 (10) "Text or media message" means a message that contains
44 written, audio, video or photographic content and is sent electronically
45 to a mobile telephone or mobile electronic device telephone number,
46 but does not include electronic mail sent to an electronic mail address;

47 [(9)] (11) "Unsolicited telephonic sales call" means any telephonic
48 sales call other than a telephonic sales call made: (A) [In response to an
49 express written or verbal request] Pursuant to the prior express written
50 consent of the consumer who is called or sent a text or media message;
51 (B) primarily in connection with an existing debt or contract, payment
52 or performance of which has not been completed at the time of the
53 telephonic sales call; or (C) to an existing customer, unless such
54 customer has stated to the telephone solicitor that such customer no
55 longer wishes to receive the telephonic sales calls of such telephone
56 solicitor; and

57 [(10)] (12) "Caller identification service or device" means any
58 telephone service or device which permits a consumer to see the
59 telephone number of incoming telephone calls or text or media
60 messages.

61 (b) The department shall establish and maintain a "no sales
62 solicitation calls" listing of consumers who do not wish to receive
63 unsolicited telephonic sales calls. The department may contract with a
64 private vendor to establish and maintain such listing, provided (1) the
65 private vendor has maintained national "no sales solicitation calls"
66 listings for more than two years, and (2) the contract requires the
67 vendor to provide the "no sales solicitation calls" listing in a printed
68 hard copy format and in any other format offered at a cost that does
69 not exceed the production cost of the format offered. The department
70 shall provide notice to consumers of the establishment of a "no sales
71 solicitation calls" listing. Any consumer who wishes to be included on
72 such listing shall notify the department by calling a toll-free number
73 provided by the department, or in any other such manner and at such
74 times as the commissioner may prescribe. A consumer on such listing
75 shall be deleted from such listing upon the consumer's written request.

76 The department shall update such listing not less than quarterly and
77 shall make such listing available to telephone solicitors and other
78 persons upon request.

79 (c) No telephone solicitor may make or cause to be made any
80 unsolicited telephonic sales call to any consumer (1) if the consumer's
81 name and telephone number or numbers appear on the then current
82 quarterly "no sales solicitation calls" listing made available by the
83 department under subsection (b) of this section, unless (A) such call
84 was made by a telephone solicitor that first began doing business in
85 this state on or after January 1, 2000, (B) a period of less than one year
86 has passed since such telephone solicitor first began doing business in
87 this state, and (C) the consumer to whom such call was made had not
88 on a previous occasion stated to such telephone solicitor that such
89 consumer no longer wishes to receive the telephonic sales calls of such
90 telephone solicitor, (2) for telephone calls, to be received between the
91 hours of nine o'clock p.m. and nine o'clock a.m., local time, at the
92 consumer's location or, for text or media messages, to be received on
93 the consumer's mobile telephone or mobile electronic device at any
94 time, (3) in the form of electronically transmitted facsimiles, or (4) by
95 use of a recorded message device.

96 (d) No telephone solicitor [shall] may intentionally cause to be
97 installed or [shall] may intentionally use any blocking device or service
98 to circumvent a consumer's use of a caller identification service or
99 device. No telephone solicitor [shall] may intentionally transmit
100 inaccurate or misleading caller identification information.

101 (e) (1) Any person who obtains the name, residential address or
102 telephone number of any consumer from published telephone
103 directories or from any other source and republishes or compiles such
104 information, electronically or otherwise, and sells or offers to sell such
105 publication or compilation to telephone solicitors for marketing or
106 sales solicitation purposes, shall exclude from any such publication or
107 compilation, and from the database used to prepare such publication
108 or compilation, the name, address and telephone number or numbers

109 of any consumer if the consumer's name and telephone number or
110 numbers appear in the then current quarterly "no sales solicitation
111 calls" listing made available by the department under subsection (b) of
112 this section.

113 (2) This subsection does not apply to (A) any telephone company, as
114 defined in section 16-1, for the sole purpose of compiling, publishing
115 or distributing telephone directories or causing the compilation,
116 publication or distribution of telephone directories or providing
117 directory assistance, and (B) any person, for the sole purpose of
118 compiling, publishing or distributing telephone directories for such
119 telephone company pursuant to an agreement or other arrangement
120 with such telephone company.

121 (f) The commissioner may adopt regulations, [pursuant to] in
122 accordance with chapter 54, to carry out the provisions of this section.
123 Such regulations may include, but shall not be limited to, provisions
124 governing the availability and distribution of the listing established
125 under subsection (b) of this section and notice requirements for
126 consumers wishing to be included on the listing established under
127 subsection (b) of this section.

128 (g) A violation of any of the provisions of this section shall be
129 deemed an unfair or deceptive trade practice under subsection (a) of
130 section 42-110b, except that no telephone solicitor may be liable under
131 this section for a call made in violation of subdivision (1) of subsection
132 (c) of this section if such telephone solicitor demonstrates that: (1) Such
133 telephone solicitor established and implemented written procedures
134 and trained its employees to follow such procedures to comply with
135 subdivision (1) of subsection (c) of this section; (2) such telephone
136 solicitor deleted from its call list any listing of a consumer on the then
137 current quarterly "no sales solicitation calls" listing maintained
138 pursuant to subsection (b) of this section; and (3) such call was made
139 inadvertently.

140 (h) No telephone solicitor may make or cause to be made an

141 unsolicited, automatically dialed, recorded telephonic sales call to a
142 consumer without such consumer's prior express written consent.

143 (i) In addition to the requirements of subsections (b) to (h),
144 inclusive, of this section, if a consumer's mobile telephone or mobile
145 electronic device telephone number does not appear on the then
146 current quarterly "no sales solicitation calls" listing made available by
147 the department under subsection (b) of this section, no telephone
148 solicitor may send or cause to be sent a text or media message to such
149 number for the purpose of marketing or sales solicitation of consumer
150 goods, unless such telephone solicitor has received the prior express
151 written consent of the consumer to receive such text or media message.

152 (j) Notwithstanding the provisions of subsections (c) and (i) of this
153 section, a telecommunications company, as defined in section 16-1,
154 may send a text or media message to an existing customer, provided:
155 (1) Such telecommunications company does not charge the customer a
156 fee for such text or media message, and (2) such text or media message
157 is primarily in connection with (A) an existing debt, payment of which
158 has not been completed at the time the text or media message is sent,
159 (B) an existing contract between the telecommunications company and
160 the customer, (C) a wireless emergency alert authorized by federal law,
161 or (D) a prior request for customer service that was initiated by the
162 customer.

163 [(h)] (k) In addition to any penalty imposed under chapter 735a, any
164 telephone solicitor, who is liable under the provisions of [subsection
165 (g)] subsections (g) to (i), inclusive, of this section, shall be fined not
166 more than [eleven] twenty thousand dollars for each violation.

167 Sec. 2. (NEW) (*Effective October 1, 2014*) Each telephone and
168 telecommunications company, as defined in section 16-1 of the general
169 statutes, that issues an account statement to a consumer with respect to
170 service for a telephone, mobile telephone or mobile electronic device
171 shall, not less than two times per year, include on or with such
172 statement a conspicuous notice, informing the consumer with respect

173 to: (1) The prohibitions placed on telephone solicitors pursuant to
174 section 42-288a of the general statutes, as amended by this act, (2) how
175 to place the consumer's telephone number, mobile telephone number
176 or mobile electronic device telephone number on the "no sales
177 solicitation calls" listing established pursuant to subsection (b) of
178 section 42-288a of the general statutes, as amended by this act, and (3)
179 how to obtain a "no sales solicitation complaint" form on the
180 Department of Consumer Protection's Internet web site.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	42-288a
Sec. 2	<i>October 1, 2014</i>	New section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill results in no fiscal impact as the Department of Consumer Protection currently acts on related complaints. It is anticipated that any additional complaints will result in solutions which will not result in any fines.

Senate "A" (LCO 3684) is technical and results in no fiscal impact.

House "A" (LCO 4742) is technical and results in no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 209 (File 191, as amended by Senate "A" and House "A")******AN ACT PROHIBITING UNSOLICITED COMMERCIAL TEXT MESSAGES AND INCREASING PENALTIES FOR VIOLATIONS OF THE DO NOT CALL REGISTRY.*****SUMMARY:**

This bill broadens the scope of the laws regulating telemarketers. It generally prohibits telephone solicitors from making an unsolicited sales call, including sending texts and media messages, to consumers on the state "Do Not Call" registry unless they receive a consumer's prior express written consent (see BACKGROUND). Current law allows these calls upon written or verbal request. The bill also prohibits solicitors from making or causing to be made an unsolicited, automatically dialed, recorded telephonic sales call without prior express written consent. These messages are often referred to as "robocalls."

The bill (1) includes the sending of text or media messages among the registry's prohibited acts and (2) restricts when solicitors and telecommunication companies can send text and media messages. Under the bill, a text or media message is a message that contains written, audio, video, or photographic content and is sent electronically to a mobile telephone or electronic device telephone number, but does not include electronic mail.

The bill also increases the maximum fine for each registry violation from \$11,000 to \$20,000. By law and under the bill, "Do Not Call" violations are also deemed an unfair and deceptive trade practice.

Under the bill, each telephone and telecommunications company that issues an account statement to a consumer for providing

telephone, mobile telephone, or mobile electronic device services must include, at least twice a year, a conspicuous notice on or with the statement. The notice must inform a consumer of (1) the prohibited actions of telephone solicitors; (2) how to place his or her telephone, mobile telephone, or mobile electronic device number on the "Do Not Call" registry; and (3) how to obtain a registry complaint form on the Department of Consumer Protection website.

*Senate Amendment "A":

1. requires solicitors to receive prior express written consent under certain situations;
2. prohibits solicitors from (a) making unsolicited telephonic sales calls without prior express written consent and (b) sending unsolicited texts at any time rather than only between 9:00 p.m. and 9:00 a.m.;
3. allows telecommunications companies to send texts under certain circumstances;
4. expands the notice requirement to include additional disclosures and requires telephone companies to give them;
5. amends and adds definitions; and
6. makes technical changes.

*House Amendment "A" allows telecommunications companies to sell free emergency alert text or media messages to customers and clarifies other times they may send these messages.

EFFECTIVE DATE: October 1, 2014

TEXT AND MEDIA MESSAGES

The bill prohibits solicitors from sending these messages to a consumer's mobile telephone or electronic device at any time.

Regardless of whether a consumer is on the registry, the bill allows solicitors to send text or media messages for marketing or soliciting sales of consumer goods, or cause them to be sent, only if the solicitor has received the consumer's prior express written consent to receive such texts.

Under the bill, a telecommunications company may send a free text or media message to an existing consumer if the message is primarily in connection with (1) an existing debt that has not been paid when the message is sent, (2) an existing contract between the company and the customer, (3) a wireless emergency alert authorized by federal law, and (4) a prior consumer-initiated request for customer service.

BACKGROUND

Prior Express Written Consent

Under federal regulations, prior express written consent means an agreement, in writing, bearing the caller's signature (including electronic or digital signatures) that clearly authorizes the seller to deliver or cause to be delivered to the caller, advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice. The agreement must (1) include a clear and conspicuous disclosure with certain consumer protections and (2) give the telephone number the caller authorizes the messages to be delivered (47 CFR 64.1200).

Do Not Call Registry

Connecticut Law. State law allows any individual to register a telephone number with the "Do Not Call" registry, and prohibits telephone solicitors from making unsolicited telephone calls to any number listed on it. The law applies to calls made to (1) engage in a marketing or sales solicitation, (2) solicit a credit extension for such goods or services, or (3) obtain information to use in the soliciting a sale or credit extension.

The law does not apply to calls made or sent (1) in response to a consumer's visit to a seller's establishment; (2) by a tax-exempt

nonprofit organization; (3) primarily in connection with an existing debt or contract that has not been paid or performed; or (4) to an existing consumer, unless he or she has informed the solicitor that he or she no longer wishes to receive the solicitor's calls (CGS § 42-288a).

Federal Law. The Federal Communication Commission restricts telemarketers from placing unsolicited robocalls and sending text messages under the Telephone and Consumer Protection Act. Under federal law, telemarketers cannot make robocalls based solely on an "established business relationship."

Federal law bans these texts unless (1) the recipient previously consented to receive the message or (2) the message is sent for emergency purposes. This ban applies even if a person has not placed his or her mobile phone number on the national Do Not Call list.

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys' fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 17 Nay 0 (03/13/2014)

Judiciary Committee

Joint Favorable

Yea 40 Nay 0 (04/14/2014)